

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

LABOUR REVISION NO. 1 OF 2022

GEITA GOLD MINING LIMITED..... APPLICANT

VERSUS

WAMBURA CHAMA & 2 OTHERSRESPONDENTS

JUDGMENT

26/5/2023 & 14/7/2023

ROBERT, J:-

This matter comes before the Court as a revision application seeking to set aside an Arbitration Award issued by the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/MZ/GEIT/344,345,346/2015. The applicant, Geita Gold Mining Ltd, contests the CMA award and seeks a revision based on various grounds. The parties were represented by Ms. Marina Mashimba, counsel for the applicant and Mr. Duttu Chebwa, counsel for the respondents.

The respondents were former employees of the applicant until their termination on allegations of breaching the Disciplinary Code of Conduct on 24th July, 2015. Each of the respondents filed a labour dispute at the CMA, claiming statutory payments and compensation for unfair termination. The CMA consolidated their respective disputes and ruled in their favour, ordering the applicant to pay each respondent sixty months' salaries as compensation for unfair termination. Aggrieved, the applicant seeks to set aside this award, alleging that the termination was procedurally fair, there were valid reasons for termination, and the compensation awarded was excessive.

The applicant's counsel, Ms. Marina Mashimba, presented three issues for determination: First, whether the termination of the respondents' employment was procedurally unfair. Secondly, whether there were valid reasons for the termination. Lastly, whether the arbitrator was right in awarding sixty months' salaries as compensation.

Commencing with the second issue pertaining to the reasons for termination, Ms. Mashimba, faulted the CMA for ruling that there were no substantive grounds for the termination of the respondents. She maintained that, the CMA verdict rested on the premise that the evidence presented failed to substantiate the respondents' violation of the company's disciplinary

policy and procedure. She impugned the CMA as misdirected by deeming the presented evidence as hearsay. She argued that the evidence furnished during the disciplinary hearing and the CMA proceedings demonstrated unequivocally that the respondents had, indeed, breached both the disciplinary policy and procedures. She noted that, the company's disciplinary policy document was formally introduced as exhibit SU7 in the CMA.

Moving forward, Ms. Marina argued that all three respondents were implicated in an endeavor to pilfer gold-bearing stones. This illicit undertaking transpired on 18/5/2015 during nighttime hours, within the precincts of Geita Gold Mining. She reminded the court that the standard of proof applicable to the alleged offenses against the respondents was that of the "balance of probabilities," as delineated in Rule 9 (3) of GN. No. 42/2007.

She submitted that, in order to establish the propriety of the grounds for termination, the employer proffered the testimonies of four key witnesses: SU1, SU3, SU4, and SU5, each attesting to matters of substantive fairness. The cumulative testimony, it was contended, satisfactorily demonstrated that the respondents had transgressed clauses within the Disciplinary Policy and procedures, including clause 11:3:1 (Negligence in

performance resulting in damage, theft, or loss of company property), 11.3.5 (dishonesty in duty execution), 11.3.12 (abuse/misuse of position for personal gain), 11.4.6 (attempted theft/removal of company property), and 11.4.7 (collusion/dealing in or aiding others to unlawfully acquire company property).

She argued that, the testimonies of the aforesaid witnesses collectively attested that on the date in question, between 1:00 HRS and 2:30 HRS, a concerted endeavor was made to abscond with gold-bearing stones within the company premises. The orchestrated theft involved some illegal miners who infiltrated the mining area, colluding with certain company employees. Notably, these culprits attempted to use a KK Security motor vehicle (denoted as KLV 04) to facilitate their escape via the main gate called MIKE I.

The narrative pivoted to the specifics of the testimonies rendered by the witnesses, SU4 and SU5, which reinforced the illicit nature of the event. Their depositions substantiated that KLV 04 was intercepted and identified in the act, leading to a swift response by company personnel. The security personnel involved recognized that KLV 04 was being trailed by LV 273, operated by the first and third respondents, and was even being escorted by

another company vehicle, LV 299, driven by the second respondent, Samwel Paul. Ultimately, the theft was foiled, leading to the apprehension of the respondents and the recovery of the stolen material.

The counsel for the applicant contended that the arbitrator's assessment, which denied the veracity of the alleged breaches, was flawed. Specifically, the arbitrator claimed insufficiency of evidence and rejected the whistleblower's account due to its hearsay nature. Ms. Mashimba asserted that, although the initial whistleblower account was hearsay, it was substantiated by the corroborative testimonies of SU4 and SU5, who directly observed the respondents' involvement in the events. Moreover, the counsel underscored the respondents' consistent and concerted efforts to divert suspicion, ultimately underscoring their guilt.

Addressing each specific breach, Ms. Marina made the following contentions: On Negligence (Code 11:3:1); she challenged the arbitrator's assertion that this breach was unproven. She argued that the second respondent, as the rompad supervisor, bore a clear responsibility for the security of the premises. By failing to prevent unauthorized entry and neglecting to report the presence of the suspicious vehicle, he exhibited negligence. On dishonesty (Code 11:3:5); she argued that, the respondents'

engagement in a fraudulent act was substantiated by their involvement in escorting a vehicle engaged in the attempted theft, which represented a dishonest act undermining company interests. With regards to abuse/Misuse of Position (Code 11:3:12); she submitted that, the respondents' use of their respective positions to facilitate the attempted theft directly contravened the company's interest and displayed an abuse of their authority. On attempted theft (Code 11:4:6); the learned counsel rejected the contention that the attempted theft lacked substantiation. She argued that the respondents' direct involvement in escorting the stolen material, as evidenced by their movement patterns and testimonies, firmly established their complicity. With regards to Collusion/Dealing in Unlawful Acquisition (Code 11:4:7); she contested the arbitrator's assertion that this breach was unsubstantiated. She highlighted the respondents' coordinated actions in escorting the stolen material, establishing their involvement in colluding to engage in unlawful activities.

In tandem with these contentions, she underlined the discrepancy between the arbitrator's assessment and the evidence presented. She maintained that the evidence, comprising testimonies, movement reports, and Google map snapshots provided by SU3, collectively underscored the

respondents' participation in the attempted theft. Their movement patterns, positions, and actions at the scene were scrutinized to demonstrate their complicity.

Furthermore, she opposed the CMA's challenge of the evidentiary value of the C-track movement reports and rejected the assertions that the map snapshots and movement reports failed to demonstrate the motor vehicle's interrelation. Ms. Mashimba argued that, when analyzed alongside the testimonies of witnesses, the movement data provided by SU3, which included a snapshot of the map, conclusively illustrated the synchronized actions of the respondents.

She submitted further that, considering the totality of the evidence presented, it was irrefutably established that the respondents had committed the alleged breaches. The respondents involvement in the attempted theft was substantiated by their coordinated actions, positions, and behaviours. The evidence provided at the CMA proceedings, alongside the body of testimonies, unequivocally confirmed the validity of the grounds for the respondents' termination. In light of this, she implored the Court to resolve this issue in the affirmative.

In response to this issue, Mr. Duttu Chebwa, counsel for the respondents presented a comprehensive argument with multiple facets to establish that there were no valid reasons for termination of the respondents.

First, Mr. Chebwa argued that the nature of the charges leveled against the respondents raised doubts about the validity of the termination. He maintained that, the charged offenses were characterized by vagueness, suggesting that the applicant lacked certainty regarding the exact nature of the respondents' actions. He argued that, this ambiguity cast doubt on the legitimacy of the termination.

Moving forward, he contended that the evidence put forth during both the disciplinary hearing and the CMA proceedings fell short of substantiating the alleged attempted theft at the rompad area and failed to establish a direct connection between the respondents and the charges they faced. He raised several key points to bolster this argument:

Sensitive Security Area: He argued that, the rompad area, where the purported theft was said to occur, was highlighted as an exceedingly sensitive security zone. The evidence on record underscored this sensitivity,

with testimonies (referenced at pages 20, 53, 121, and 118 of the proceedings) attesting to the presence of multiple layers of security measures, including the presence of RRV, police, community observers (sungusungu), and CCTV cameras. Additionally, the area was staffed by personnel from various departments (refer to SM1 at page 101). The counsel raised a pertinent query as to why individuals from these areas were not summoned to provide testimony regarding the alleged theft. He emphasized that, the absence of such crucial testimony undermined the evidentiary basis of the allegations.

Alternative Possibilities: He contended that the evidence presented failed to convincingly demonstrate that the alleged gold-bearing stone could only have been taken from the rompad area. Alternative locations, such as pits, waste dumps, low-grade areas, processing sections, and the rompad itself, were highlighted as plausible sources from which the alleged stones could have been obtained. He argued that, this possibility suggested that the evidence was insufficient to conclusively link the respondents to the alleged theft.

C-Track Movement Data: Mr. Chebwa concurred with the arbitrator's observation that the C-track movement data, which was presented as a primary link between the respondents and the alleged crime, did not unequivocally implicate the respondents. The absence of LV 273 data within the C-track system was raised as a point of contention, casting uncertainty on the movement patterns of one of the key vehicles. This uncertainty was coupled with an agreement that the C-track data, in isolation, did not definitively demonstrate the respondents' involvement in the alleged criminal activity.

Testimony of Informer: The counsel highlighted that the core evidence linking the respondents to the crime was derived from the testimony of an informer, which was characterized as hearsay. The absence of the informer from the proceedings was raised as a significant limitation, since their direct testimony would have been crucial in establishing the veracity of the allegations.

Camera Evidence: Additionally, the counsel pointed out that the alleged cameras installed in LV 273 were not presented as evidence in court. This omission raised questions about the reliability of the camera evidence that was purportedly linked to the case.

In sum, the counsel argued that the collective weaknesses in the evidence undermined the credibility of the charges against the respondents. The absence of crucial testimony from security personnel, the lack of clarity about alternative sources of the stolen material, uncertainties in the C-track data, reliance on hearsay evidence, and the unavailability of camera evidence collectively created a significant gap in the evidentiary chain.

The argument concluded by highlighting the counsel's position that, given the substantial doubts raised about the evidentiary basis for the alleged offenses, the termination could not be regarded as having a valid reason. The multiple uncertainties and gaps within the evidence cast a shadow of doubt on the credibility of the charges and the fairness of the termination.

Rejoining on this ground, Ms Mashimba firmly restated that there indeed existed valid reasons for the respondents' termination. The entirety of the evidence presented, when considered collectively, adequately substantiated the assertion that the respondents were indeed engaged in the attempted theft. It was stressed that the evidence, when taken as a whole, supported the conclusion that the respondents had played a role in the alleged criminal activity.

Responding to the contention that the rompad finger 9 area had CCTV cameras, the counsel emphasized that the evidence demonstrated otherwise. Specifically, she pointed out that the testimony of SU1, who was a significant witness, established that there were no CCTV cameras present at rompad finger 9. This clarification was aimed at addressing any doubts regarding the presence of surveillance equipment in that particular area.

With regards to the argument suggesting that the gold-bearing stones could potentially be found in other locations, the counsel counter-argued that both the C-track movement report and the Google map data directly contradicted this notion. According to these sources of evidence, the motor vehicles that were allegedly involved in the attempted theft were tracked as being at rompad finger 9 before proceeding to the Mike I area, where they were subsequently observed by witnesses. This sequence of events, as evidenced by the C-track and Google map data, convincingly refuted the notion that the stolen materials could have originated from alternate sources.

In conclusion, the counsel reiterated that the evidence, taken as a whole, was robust enough to establish the allegations of breaches against

the respondents. By addressing concerns related to CCTV coverage at the rompad finger 9 area and effectively debunking the argument about alternate locations for the stolen materials, the counsel emphasized that the totality of the presented evidence undeniably supported the assertion that the respondents had indeed committed the alleged breaches.

Upon careful consideration of the evidence and arguments presented, this Court, in line with Section 37 (1) and (2) of the Employment and Labour Relations Act, Cap. 366 R.E. 2019, carefully evaluated the evidence to determine whether the applicant successfully established valid reasons for termination.

The evidence adduced, including witness testimonies and documentary exhibits, provides a reasonable basis to conclude that the respondents breached the company's Disciplinary Code of Conduct by being involved in the attempted theft. The testimonies of witnesses, such as SU1, SU3, SU4, and SU5, supported by exhibits SU1, SU2, SU3, and SU13, provide a detailed account of the events leading to the attempted theft and implicate the respondents in the alleged misconduct.

While the respondents dispute the validity of the evidence and argue that there is insufficient proof connecting them to the alleged breaches, this Court finds that the preponderance of evidence favours the applicant's position. The testimonies and exhibits presented by the applicant establish a reasonable basis to believe that the respondents were involved in the attempted theft. The respondents' arguments questioning the presence of CCTV cameras and the possibility of gold-bearing stones being found in other areas do not sufficiently undermine the weight of the evidence against them.

The movements of the motor vehicles involved, as captured in the C-track movement reports and supported by Google map snapshots, indicate a connection to the alleged crime. The court notes that the arbitrator's findings in this regard were based on an incorrect interpretation of the evidence, particularly concerning the roles and responsibilities of the respondents. The court finds that the evidence, when considered in its totality, establishes that the respondents were involved in an attempt to steal gold-bearing stones, which constituted valid reasons for their termination

The C-Track report provided data on the movements of the Respondents during the time of the alleged attempted theft. The report indicated that the Respondents' vehicles were in close proximity to the

location of the alleged incident. This information was used to support the contention that the Respondents were involved in the attempted theft.

The Google Map data was introduced to corroborate the information provided by the C-Track report. The Applicant presented Google Map images that showed the layout of the mining site, the location of the alleged theft, and the paths taken by the Respondents' vehicles. By comparing the C-Track report data with the Google Map images, it was possible to establish a connection between the Respondents' movements and the location of the incident. This evidence was aimed at reinforcing the argument that the Respondents were in close proximity to the scene of the alleged attempted theft.

The CCTV camera footage from the mining site captured images of the Respondents' vehicles entering and exiting the site during the relevant time period. The CCTV footage showed the Respondents' vehicles parked near the area where the alleged theft was said to have taken place. Additionally, the footage revealed the presence of the Respondents near the site. The Applicant argued that the CCTV footage supported the contention that the Respondents were present at the scene of the incident, which aligned with the allegations of their involvement in the attempted theft.

Overall, the combination of the C-Track report, Google Map data, and CCTV camera footage provided a multi-faceted view of the Respondents' movements and activities during the time in question. These pieces of evidence were pivotal in establishing a connection between the Respondents and the alleged attempted theft, which was central to the case's outcome. Ultimately, the theft was foiled, leading to the apprehension of the respondents and the recovery of the stolen material. Hence, the Court decided that there were valid reasons for termination.

Addressing the first issue, which pertains to the fairness of the termination procedure, the Applicant's counsel contended that the termination procedure had been duly and fairly followed. She faulted the several reasons identified by the arbitrator to impugn the procedure employed in the respondents' termination namely; inadequate preparation time for the disciplinary hearing, lack of provision of investigation reports and witness statements prior to the hearing, a mere eight-minute temporal gap between the hearings of the first and second respondents, the first respondent being the sole recipient of the evidence of SU3, the absence of the second respondent's Head of Department's recommendations on disciplinary actions, and the signing of the complaint form by the third

respondent's Head of Department on 16/5/2015, pre-dating the alleged attempted theft.

Reacting to the arbitrator's grounds for contesting the termination procedure, she asserted that with regard to the respondents' insufficient preparation time for the disciplinary hearing, while it was conceded that the legally mandated 48-hour period was not met, SU2 revealed that there was an elapsed time of 46 hours and 28 minutes from the service of hearing notification forms to the initiation of the hearing. She maintained that this mitigated the irregularity, as it allowed the respondents a reasonable span for preparation. Moreover, she emphasized that the respondents exhibited no objections at the commencement of the disciplinary hearing, as indicated by the testimony of SU2, in which they expressed consent and readiness to proceed.

On the issue of the non-provision of investigation reports and witness statements before the disciplinary hearing, she conceded that these documents were indeed withheld. However, she argued that Rule 13 (5) of GN. No. 42/2007 did not impose an obligatory requirement to furnish such documents to the employee prior to the hearing. Instead, she posited that the law necessitated the presentation of all relevant information during the

disciplinary hearing to afford the employee an opportunity for response and cross-examination of witnesses. To bolster her argument, she referred to the case of **Geita Gold Mining Limited vs Tenga B. Tenga**, Labour Revision No. 14/2021, wherein the court stated that no such requirement existed, she contended that the arbitrator's stance was misguided.

Concerning the temporal proximity of eight minutes between the disciplinary hearings of the first and second respondents, she argued that the arbitrator misconstrued this aspect. According to SU2, all respondents were summoned jointly, and the charges were articulated collectively. Thereafter, the proceedings continued individually against each respondent, as delineated in pages 44, 45, and 51. Similarly, it was maintained that the hearing did not unfold in a single day, as evidenced by SU10, SU11, and SU12, which demonstrated distinct dates of occurrence: 5/6/2015, 9/6/2015, 12/6/2015, 16/6/2015, and 30/6/2015. Any eight-minute discrepancy was attributed to clerical errors in the hearing forms' recorded by the secretary.

On the assertion that only one respondent cross-examined SU3, she argued that this was unfounded. According to SU2, the testimony of SU3 was delivered in the presence of all three respondents, as corroborated by SU3's testimony at pages 52 and 61 of the proceedings. Furthermore, exhibit

SU10 evidenced that the representative of the relevant respondent also engaged in cross-examination.

On the argument that the second respondent's Head of Department did not proffer recommendations regarding disciplinary measures against Samwel Paul (exhibit SU3), she contended that the Head of Department's endorsement of the complaint form implied concurrence with the complainant's call for disciplinary action.

Addressing the contention that the third respondent's Head of Department dated the complaint form as of 16/5/2015, pre-dating the alleged theft, she argued that this discrepancy stemmed from a human error. SU1's testimony indicated that the alleged breach occurred on 18/5/2015, and the form was presented to the third respondent's Head of Department on the same day.

The counsel highlighted the absence of reference to the testimonial explanations for the procedural irregularities in the arbitrator's analysis. She maintained that these irregularities did not prejudice the respondents and that not all procedural deviations could impact the case outcome, unless they demonstrably led to a miscarriage of justice. Reference was made to the

precedent of **Geita Gold Mining Limited** (supra) to support this contention. Ultimately, she urged the court to conclude that procedural fairness was upheld.

In response to this issue, counsel for the respondent contended that the applicant had breached termination procedures in several critical aspects:

Starting with insufficient notice period; he argued that the process of being heard commences with the service of the hearing notification to the employees facing termination. He highlighted that the 2nd respondent received the notice on 3/6/2015 at 14:00hrs and was required to attend the hearing on 5/6/2015 at 9:00hrs, giving a time gap of only 31 hours, instead of the mandated 48 hours. Quoting Rule 13 (2) of the GN. No. 42/2007, the counsel emphasized that a minimum notice period of 48 hours is necessary. In view of the alleged criminal nature of the breaches, he argued that the respondents were entitled to more time for preparation, stressing that the principle of natural justice was violated as the respondents were not afforded adequate time to prepare for the hearing.

The other breach of termination procedure is the Failure to Provide Documents. He pointed out the failure to provide the respondents with an investigation report and witness statements before the disciplinary hearing. He highlighted that the respondents were not given an investigation report, even though the charges were based on findings from the investigation. The testimony of SU2 Japhes Rwechungura and others confirmed this lack of document sharing. The counsel underlined the prejudice suffered by the respondents, referring to SM1's testimony that he needed documents that were not provided. He cited the case of **Severo Mutegeki and Another vs Mamlaka ya Maji safi na Usafi wa Mazingira Mjini Dodoma (DUWASA)**, Civil Appeal No. 343/2019 to bolster the claim of prejudice.

He mentioned the other procedural breach to be Lack of Head of Department Opinion. The counsel argued that the absence of a comment from the Head of Department against Samwel Paul was a flaw in the procedure. The evidence indicated that no comment was provided by the Head of the Department, as per the testimony of SU2 and SU1. He stressed that this omission, in accordance with exhibit SU7, rendered the disciplinary hearing fatally flawed.

Submitting further, the counsel raised concerns about the Head of Department signing John Magige's complaint form on 16/5/2015, whereas the alleged breaches occurred on 18/5/2015. He contended that this discrepancy demonstrated a procedural lapse. The counsel underscored that there was no evidence supporting the assertion that this was a human error.

With regards to failure to allow mitigation, the counsel pointed out the procedural requirement that after a hearing, the charged individual should be given the opportunity to mitigate. He referenced rule 13 (7) of the GN. 42/2007. He highlighted that SM1's testimony indicated that he was denied the chance to mitigate, further indicating a procedural misstep.

Coming to inconsistencies in hearing time, the counsel addressed concerns about the timing of the hearings. According to exhibit SU8, the hearing date was 5/6/2015, yet the hearing times for John Magige and Samwel Paul were recorded as 12:58 HRS and 12:50 HRS, respectively. This discrepancy raised questions about the validity of the disciplinary proceedings. He highlighted the testimonies of SU2, SU3, and SM3, which suggested irregularities in the sequence and timing of the hearings, ultimately contending that the termination procedure had not been properly followed.

In summation, the counsel argued that the applicant had failed to adhere to proper termination procedures on various fronts. From inadequate notice periods to the absence of critical documentation, the counsel emphasized that the respondents' rights to a fair procedure were compromised. These procedural missteps, according to the counsel, rendered the termination process inherently unfair and deserving of redress.

In her comprehensive rejoinder, Ms. Mashimba responded to the assertions raised in relation to various procedural issues:

In respect of Notice Period, Ms. Mashimba addressed the contention regarding the time gap of 31 hours between notification and the disciplinary hearing. She referred to SM1's testimony on page 105, which indicated that the hearing commenced at 12:58 HRS, translating to 46 hours and 28 minutes from the notification. She further noted that on page 112 of the proceedings, SM1 testified that they were prepared to proceed with the hearing, suggesting that the respondents were not prejudiced by the slightly shorter notice period.

Coming to the question of Investigation Report and Witness Statements, Ms. Mashimba reiterated that the evidence demonstrated that

documents created during the investigation were presented to the respondents during the disciplinary hearing. She clarified that there was no separate investigation report provided. She underscored that the absence of a distinct investigation report was a distinguishing factor from the case of **Severo Mutegeki** (supra), where an audit report played a crucial role in determining the alleged offence.

With regards to Head of Department's Comment, Ms. Mashimba restated her earlier argument in response to the claim that the Head of Department failed to provide comments or recommendations. She emphasized that the counsel for the respondents had not identified a specific policy or procedure violated by the Head of Department's omission to comment.

As for the alleged Pre-Signing of the Form, addressing the assertion that the Head of Department for the 3rd respondent signed a form prior to the alleged crime, Ms. Mashimba reiterated her position that this was a human error, as previously stated on page 31 of the proceedings by SU1. She maintained that this error was acknowledged and explained during the proceedings.

On Mitigation Opportunity, Ms. Mashimba contested the introduction of a new issue regarding the alleged denial of an opportunity for mitigation. She argued that this was not raised in the original case and should be disregarded.

With regards to the alleged difference in hearing times, Ms. Mashimba restated her earlier arguments about the difference of 8 minutes in the hearing times of the 1st and 2nd respondents, emphasizing that her previous submissions addressed this issue comprehensively.

In conclusion, Ms. Mashimba reaffirmed her stance on the procedural matters raised by the respondents. She provided clarifications and rebuttals to the contentions put forth by the opposing counsel.

Upon careful review of the evidence and arguments presented, this Court finds that the termination procedure was not conducted in accordance with the requirements of procedural fairness. The time between notification and the disciplinary hearing, although close to the minimum required by the law, fell short of the 48-hour period stipulated in Rule 13(2) of GN. No. 42/2007. The failure to provide the respondents with an investigation report and witness statements prior to the hearing, as acknowledged by both

parties, deprived the respondents of an opportunity to adequately prepare their defense.

While the applicant argues that the alleged irregularities did not prejudice the respondents, this Court finds that the respondents were indeed prejudiced by the lack of time for preparation, the absence of relevant documents, and the incomplete disciplinary process. The principle of natural justice requires that parties be given a fair opportunity to present their case and respond to the allegations made against them. In this case, the respondents' ability to fully participate and defend themselves was compromised, leading to a violation of their right to a fair hearing.

Therefore, this Court concludes that the termination of the respondents' employment was procedurally unfair, and the first issue is decided in favor of the respondents.

Addressing the third issue concerning the awarded sixty months' salary, Ms. Mashimba contended that the granted compensation was unduly excessive given the circumstances of the case. Furthermore, she argued that the arbitrator failed to provide adequate reasoning for such a high compensation award.

She went on to assert that the evidence presented during the proceedings indicated that there were valid reasons for the termination. Additionally, she reiterated her earlier submissions that the termination procedure had been duly followed. Ms. Mashimba emphasized that even if the termination were deemed procedurally unfair, this in itself would not warrant a compensation award equivalent to sixty months' salaries.

To substantiate her position, she referred to the case of **Felician Rutwaza vs. Word Vision Tanzania**, Civil Appeal No. 213 of 2019, specifically highlighting pages 15 and 16 of that case. Drawing from this legal authority, she argued that procedural unfairness should result in a more moderate compensation amount, rather than an excessively high award.

In conclusion, she urged the court that if it were to determine the termination as procedurally unfair, it should adhere to the precedent set in the cited case and grant compensation in a more reasonable and proportionate manner. Ms. Mashimba concluded by requesting that the court grant the requested relief in accordance with her arguments presented.

Responding to the issue of the awarded compensation, Mr. Chebwa asserted that a 60-month compensation was rightfully granted to the

respondent due to both procedural and substantive unfairness in the case at hand.

Emphasizing the legal context, the counsel highlighted that while the law sets a minimum limit for compensation duration, it does not establish a maximum timeframe. Therefore, the arbitrator possesses the discretion to award a compensation period exceeding the minimum of 12 months, provided valid reasons are presented. In the arbitration award, on page 41, the arbitrator expressly outlined the rationale for bestowing a compensation duration exceeding 12 months, as stipulated in Rule 32 (5) of the GN. No. 67/2007.

In support of this stance, reference was made to legal precedents to substantiate the arbitrator's discretionary power. Citing the cases of **Isack Sultan vs. North Mara Gold Mines Limited**, Consolidated Labour Revision Application No. 16 and 17 of 2018 (pages 24 and 25) and **Veneranda Maro and Another vs. AICC**, Civil Appeal No. 322 of 2020 (pages 18, 19, 20, and 21), the counsel highlighted instances where the courts have upheld the exercise of such discretion.

Reinforcing the view that the arbitrator's decision was judiciously made, the counsel maintained that the awarded compensation was equitable and appropriate given the circumstances. Concluding his submission, the counsel implored the court to reject the request for revision and uphold the arbitrator's decision as valid and just.

Rejoining on the issue regarding the contention that the awarded compensation was excessive, Ms. Mashimba countered by asserting that the grant of 60 months' salaries as compensation was disproportionate considering the specific circumstances of the case.

Regarding compensation awarded by the CMA, this Court notes that, while the arbitrator has discretion in determining compensation, the award must be reasonable and proportionate to the circumstances. The Court acknowledges the authority of the CMA to determine compensation but emphasizes the need for proportionality, particularly in cases involving procedural deviations.


The Court is aware of the legal principle which emphasizes the need for proportionality in compensation awards where procedural fairness has been compromised. Therefore, taking into consideration the validity of the

termination reasons and the procedural lapses, the Court finds that a compensation award of sixty months' salaries is excessive and disproportionate.

In light of the above findings, the termination of the respondents' employment is declared procedurally unfair. Consequently, the Court grants the application to revise and set aside the Arbitration Award issued by the Commission for Mediation and Arbitration (CMA) for Mwanza in Labour Dispute No. CMA/MZ/GEIT/344,345,346/2015 dated 22nd November, 2021. The compensation award of sixty months' salaries is deemed excessive, and hereby substituted with a compensation for twelve months' salaries. Each party shall bear its own costs for this application.

It is so ordered.




K.N.ROBERT
JUDGE
14/7/2023